IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 471

THE SHOTWELL MANUFACTURING COMPANY, BYRON A. CAIN, FRANK J. HUEBNER AND HAROLD E. SULLIVAN,

Cross-Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

REPLY MEMORANDUM FOR CONDITIONAL CROSS-PETITIONERS.

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This reply is limited to the question of timeliness of the Conditional Cross-Petition. It should not be construed as a deviation from our basic position that certiorari should be denied in No. 470, this term, and in that event, here also. But if the writ should be granted in No. 470, it should be granted here.

We do not understand that the Solicitor General contends that the Cross-Petition is untimely. Nor could he well do so because inspection of the briefs in *Johnson* v. *Eisentrager*, 339 U. S. 763, reveals that in that case the Government considered, just as we assert here, that the running of time for certiorari was tolled for all parties where one of them (there the Government's

opponent), filed a petition for rehearing below. The Court, without discussion of the point, allowed the writ. Stern and Gressman, in their *Supreme Court Practice*, 2d ed., p. 166, state that a similar result was reached in *U. S. v. Crescent Amusement Co.*, 323 U. S. 173. (The briefs and record in that case are not currently available to us.)

Federal Trade Commission v. *Minneapolis Honeywell Co.*, 344 U. S. 206, is of no assistance because it did not in any way involve a petition for rehearing, much less one in a criminal case in which the judgment is necessarily unitary (*Cf. Heike* v. *United States*, 217 U. S. 423). It involved successive judgments on separate and severable parts of a Federal Trade Commission order.

Respectfully submitted,

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November 22, 1955.